IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

WP(C).No. 36288 of 2007(T)

PETITIONER:

KATTAKKAL THOMAS, S/O. PAILY,
AGED 67 YEARS, KATTAKKAL HOUSE, AGRICULTURIST,
P.O.ARALAM.

BY ADV. SRI.K.V.PAVITHRAN.

RESPONDENTS:
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1. **KATTAKKAL SUNNY @ PAILY, S/O. THOMAS,**
   KATTAKKAL HOUSE, ARALAM AMSOM, DESOM,
   P.O.ARALAM.

2. **KATTAKKAL ALICE, S/O. THOMAS,**
   AGED 40 YEARS, NO OCCUPATION, KATTAKKAL HOUSE,
   ARALAM AMSOM, DESOM, P.O.ARALAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.36288 OF 2007

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Dated this the 7th day of December 2007

JUDGMENT

This writ petition is preferred against the order of the Munsiff's Court, Kuthuparamba in I.A.No.1432 of 2006 in O.S.No.108/2005. The fight is between the father and sons. The dispute is with respect to the right of a son to whom property has been alloted and whose whereabouts are not known for more than one decade. So a suit is filed for declaration that he is not heard for more than 7 years and therefore it must be considered as a civil death and therefore his right will devolve upon his father as exclusive share. The trial court as well as the appellate court found that the plaintiff is not in possession of the property and refused the relief. On the other hand, defendants would contend that by virtue of entering into a partition deed, the father is estopped from contending that he is in absolute possession over the property. By the proposed amendment what the plaintiff wants to incorporate is that in the light of the findings rendered by the court that he is not in possession of the property, defendants have trespassed into the property and reduced it into their possession and

therefore he prays for an amendment whereby instead of relief of injunction recovery of possession is sought for. This will not change the character of the suit in the sense that it will only avoid multiplicity of proceedings. The better things have to be gone into especially the question of title and it will not in any way cause any prejudice to the defendants and in order to give an effective and valid resolution of the dispute between the parties, it is necessary to allow the amendment application and if the defendants have anything to that it can be done in the form of an additional written statement.

Therefore, the order under challenge is set aside and the amendment application is allowed. The court below is directed to instruct the plaintiff to carry out the amendment, pay court fee and thereafter permit the defendants to file additional written statement, raise additional issues and then dispose of the matter in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-